



GENERAL ASSEMBLY

COMMONWEALTH OF KENTUCKY

2009 REGULAR SESSION

HOUSE BILL NO. 193

AS ENACTED

FRIDAY, MARCH 13, 2009

RECEIVED AND FILED
DATE March 24, 2009
11:18 Am

TREY GRAYSON
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY R. Adler

AN ACT relating to auctioneers.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔ Section 1. KRS 330.010 is amended to read as follows:

This chapter~~[KRS 330.010 to 330.200]~~ shall be known and may be cited as the Auctioneers License Law of 1962.

➔ Section 2. KRS 330.020 is amended to read as follows:

As used in this chapter, unless the context otherwise requires:

(1) "Advertisement" means any written, oral, or electronic communication that:

(a) Offers real or personal property or any combination thereof by or at auction; or

(b) Promotes, solicits, induces, or offers to conduct an auction or to provide auction services;

(2) "Apprentice Auctioneer" means any person who is employed or supervised, directly or indirectly, by an auctioneer to deal or engage in any activity in subsection (6) of this section, excluding the authority to enter into an auction listing contract or to independently maintain an auction escrow account;

(3) "Auction" means any method of sale, lease, or exchange of real property, personal property, or any combination thereof, by means of competitively increasing or decreasing bids. Any sale, lease, or exchange of real property, personal property, or any combination thereof, advertised or presented in any way by or at auction, is an auction for the purposes of this chapter;

(4) (a) "Auction house" means any commercial establishment at which personal property is regularly or customarily offered at auction, or at which personal property is customarily or regularly deposited and accepted, on consignment or otherwise, for sale at auction at a fixed location;

(b) "Auction house" does not mean:

1. Those establishments which limit personal property sold in regard to

1 thoroughbred horses or other horses or any interests therein,
 2 including but not limited to horse shares and seasons;

3 2. Tobacco and fixed-base livestock markets regulated by the United
 4 States Department of Agriculture; or

5 3. Fixed-base motor vehicle markets regulated by the Kentucky Motor
 6 Vehicle Commission pursuant to KRS Chapter 190;

7 (5) "Auction house operator" means the individual principally or ultimately
 8 responsible for the operation of an auction house, or in whose principal interest
 9 the establishment is operated. The auction house operator is responsible for
 10 retaining a licensed auctioneer to call bids at all auctions at the auction house;

11 (6) "Auctioneer" or "principal auctioneer" means any person who offers, solicits,
 12 negotiates, or attempts to offer, solicit, or negotiate an auction listing contract,
 13 sale, lease, or exchange of real property, personal property, or any other item of
 14 value, or any combination thereof, which may lawfully be kept or offered for sale,
 15 lease, or exchange, or any combination thereof, by or at auction, or who offers
 16 the same at auction and who is allowed to supervise and accepts the responsibility
 17 of sponsoring one (1) or more apprentice auctioneers;

18 (7) "Board" means the Board of Auctioneers;

19 (8) "Limited livestock auctioneer" means any auctioneer whose professional
 20 activities are limited to the calling of bids at the sale of livestock at fixed-based
 21 livestock yards operating under the control and guidance of the United States
 22 Department of Agriculture;

23 (9) "Personal property" means any tangible or intangible property, goods, services,
 24 chattels, merchandise, commodities, or any item of value in any form or type,
 25 other than real property, which may be lawfully kept or offered for sale,
 26 exchange, or lease;

27 (10) "Person" means any individual, association, partnership, corporation, limited

liability company, or other business entity, including any officer, director, or employee thereof;

(11) "Real property" means real estate in its ordinary meaning, including but not limited to timeshares, options, leaseholds, and other interests less than leaseholds of any form or type which may be lawfully kept or offered for sale, exchange, or lease; and

(12) "Sealed bid auction" means a sealed bidding procedure which incorporates or allows for any competitive increasing or decreasing of bids after the opening of sealed bids. A "sealed bid auction" is an auction subject to the provisions of this chapter.

~~[As used in this chapter, unless the context otherwise requires:~~

~~(1) "Apprentice auctioneer" means any person who is employed or supervised, directly or indirectly, by an auctioneer to deal or engage in any activity in subsection (2);~~

~~(2) "Auctioneer" or "principal auctioneer" means any person who offers, negotiates, or attempts to negotiate a listing contract, sale, purchase, or exchange of goods, chattels, merchandise, real or personal property, or of any other commodity which may lawfully be kept or offered for sale by or at public auction, or who sells the same at auction and who is allowed to supervise one (1) or more apprentice auctioneers;~~

~~(3) "Board" means the Board of Auctioneers;~~

~~(4) "Goods" means any chattels, goods, merchandise, real or personal property, or commodities of any form or type which may be lawfully kept or offered for sale;~~

~~(5) "Persons" includes individuals, associations, partnerships, and corporations, and the word "persons" shall also include the officers, directors, and employees of a corporation;~~

~~(6) "Auction house" means any commercial establishment at which goods are regularly or customarily offered for sale or sold at public auction, or at which goods are~~

1 customarily or regularly deposited and accepted, on consignment or otherwise, for
 2 sale at public auction at a fixed location, except those establishments which limit
 3 goods sold to thoroughbred horses or any interests therein, including, but not
 4 limited to, shares and seasons, or tobacco and certified fixed base livestock
 5 markets;

6 ~~(7) "Auction house operator" means the individual principally or ultimately responsible~~
 7 ~~for the operation of an auction house, or in whose principal interest the~~
 8 ~~establishment is operated;~~

9 ~~(8) "Livestock auctioneer" means any auctioneer whose professional activities are~~
 10 ~~limited to the sale of livestock at fixed based livestock yards operating under the~~
 11 ~~control and guidance of the United States of America pursuant to the Federal~~
 12 ~~Packers and Stockyards Act; and~~

13 ~~(9) "Tobacco auctioneer" means any auctioneer whose professional activities are~~
 14 ~~limited to the sale of tobacco at fixed based tobacco warehouses operating under the~~
 15 ~~control and guidance of the United States of America through its Department of~~
 16 ~~Agriculture.]~~

17 ➔ Section 3. KRS 330.030 is amended to read as follows:

18 (1) [On and after July 1, 1962,]It is[shall be] unlawful for any person to **advertise or**
 19 act as an auctioneer or apprentice auctioneer[, or to advertise or to assume to act as
 20 either] within the Commonwealth, **or advertise or act as an auctioneer or**
 21 **apprentice auctioneer of real or personal property located within the**
 22 **Commonwealth,** without a license issued by the **board**[Board of Auctioneers].

23 (2) **It is unlawful for any person to advertise or act as a limited livestock auctioneer**
 24 **within the Commonwealth without a license issued by the board.**

25 (3) **It is unlawful for any person to advertise or act as an auction house operator**
 26 **within the Commonwealth without a license issued by the board.**

27 (a) **An auction house operator shall be a licensed auctioneer or apprentice**

auctioneer if he or she acts as an auctioneer or apprentice auctioneer. If licensed as an auctioneer, an auction house operator license shall not be required.

(b) If an auction house operator conducts and operates more than one (1) auction house, a license shall be issued for each location, and the initial and renewal fees shall be applicable.

→ Section 4. KRS 330.040 is amended to read as follows:

(1) KRS 330.030 shall not apply to:

(a) ~~An~~~~[Sales at]~~ auction conducted by or under the direction of any public authority or pursuant to any judicial order or decree, or to any sale required by law to be at auction;~~[-]~~

(b) ~~An~~~~[Sales at]~~ auction of any real or personal property conducted exclusively by an individual who personally owns such real or personal property and who did not acquire such real or personal property for resale. This ~~paragraph~~~~[subsection]~~ is applicable only to individuals. It does not apply to any other "~~person~~~~[persons]~~" as defined in Section 2 of this Act~~[KRS 330.020(5)]~~, nor does it apply to any officer, director, or employee thereof when engaged in any duties associated with those capacities.

(c) Any ~~person~~~~[resident or nonresident crier or auctioneer]~~ who~~[-]~~ ~~simply~~ calls~~[-]~~ for bids ~~at~~~~[and strikes the bargain or who cries or acts as auctioneer in]~~ the sale of livestock owned and ~~offered~~~~[sold]~~ at auction by 4-H Clubs or FFA Clubs or club members, or by any university operated by the Commonwealth of Kentucky;~~[-]~~

(d) An auction~~[A sale]~~ conducted by or on behalf of any political party, church, or charitable organization, corporation, or association if:

1. The individual conducting the sale receives no compensation and does not, by advertising or otherwise, present himself or herself~~[hold himself]~~

out] as a licensed auctioneer; ~~[being available to engage in the sale of goods or real estate at auction.]~~

2. All real or personal property is donated and not consigned; and

3. One hundred percent (100%) of the net proceeds of the auction are donated to the political party, church, or charitable organization, corporation, or association; or

(e) A student who:

1. Is calling bids for a maximum of twenty (20) items or lots of personal property during a twenty-four (24) hour period at an auction;

2. Is under the direct supervision of a person who is both the student's instructor from a board-approved auction education provider and a licensed auctioneer; and

3. Receives no compensation and does not, by advertising or otherwise, present himself or herself as being a licensed auctioneer.

The student and the supervising auctioneer instructor may both be liable for the student's auction-related activities.

(2) Notwithstanding the provisions of this section, ~~a~~~~[no]~~ licensee~~[under this chapter]~~ shall **not** be exempt~~[exempted]~~ from any~~[of the]~~ provisions of this chapter in connection with or by reason of his participation in any sale excepted under this section.

➔ Section 5. KRS 330.050 is amended to read as follows:

(1) There is hereby created a Board of Auctioneers. The Governor shall appoint a board consisting of five (5) members, all of whom immediately prior to the date of their appointment have been residents of the Commonwealth of Kentucky for five (5) years, and four (4) whose vocation for a period of at least five (5) years has been that of an auctioneer. One (1) member shall be a citizen at large who is not associated with or financially interested in the practice or business regulated. The

1 term of the members of the board shall be for three (3) years and until their
2 successors are appointed and qualified. Members to fill vacancies shall be appointed
3 for the unexpired term.

4 (2) At no time shall there be more than two (2) auctioneer~~[three (3)]~~ members of the
5 same political party~~[faith]~~ on the board. Whenever there is an auctioneer~~[a]~~
6 vacancy on the board, the Kentucky Auctioneer Association shall recommend to the
7 Governor at least three (3) names for each auctioneer vacancy, and such
8 appointment or appointments shall be made from the recommendations of the
9 association.

10 (3) The board, immediately upon qualification of the member appointed in each year,
11 shall organize by selecting from its members a chairman.

12 (4) Each member of the board shall receive the sum of twelve thousand dollars
13 (\$12,000) per year, payable twice monthly, and reimbursement for actual and
14 necessary expenses incurred in the performance of official duties.

15 (5) The board shall have full authority to employ, and discharge, any personnel,
16 including counsel, as it may deem necessary to efficiently administer and enforce
17 the provisions of this chapter, and it shall outline the duties and fix the
18 compensation of such persons, provided that compensation shall be comparable to
19 the salaries paid other state employees, if any, which the board may deem to be
20 doing similar work. The board shall obtain office space, furniture, stationery, and
21 any other proper supplies and conveniences reasonably necessary to carry out the
22 provisions of this chapter. If any items deemed to be reasonably necessary by or
23 which are required by the board are available through vendors under contract with
24 the Commonwealth of Kentucky at less cost than if obtained otherwise, then the
25 items shall be acquired pursuant to the contract. The board shall have full authority
26 to obtain for its members, staff, and employees complete insurance coverage,
27 including, but not limited to, liability and errors and omissions insurance, so long as

1 ~~the[such]~~ insurance concerns the business of the board.

2 (6) All fees and charges collected by the board under the provisions of this chapter shall
3 be paid into the State Treasury through the Finance and Administration Cabinet and
4 shall be credited to an agency fund account for the Board of Auctioneers under the
5 provisions of KRS 45.253 and shall be withdrawn or expended as provided in that
6 section, if such payment, credit, withdrawal, or expense provisions do not conflict
7 with any provision of this chapter.

8 (a) The board may establish and collect reasonable fees relating to the
9 administration and enforcement of this chapter for application or other
10 processing costs, on-line service, continuing education provider services,
11 copy, and mailing services, or other fees necessary to offset the licensing
12 and processing costs.

13 (b) The total expenses for all purposes and obligations of the board shall not
14 exceed the total fees, charges, fines, penalties, and other income imposed
15 under the provisions of this chapter and paid into the state treasury.

16 (c) The board shall be financially self-sustaining, and if funds permit it may
17 underwrite, within its financial limitations, educational programs for the
18 enlightenment and benefit of all licensees who have paid fees pursuant to this
19 chapter.

20 (7) The board shall maintain annually~~publish~~ a list of the names and addresses of all
21 licensees regulated by the board~~[auctioneers, apprentice auctioneers, livestock~~
22 ~~auctioneers, tobacco auctioneers, and auction house operators licensed by it~~
23 ~~pursuant to this chapter]~~. This list shall also contain the names of all persons whose
24 licenses have been suspended or revoked within the preceding year, as well as any
25 other information relative to the enforcement of the provisions of this chapter that
26 the board may deem of interest to the public.

27 (8) The board may~~from time to time~~ promulgate~~necessary~~ administrative

1 regulations in accordance with KRS Chapter 13A as required to fulfill the duties
 2 and functions assigned to the board by this chapter.

3 (9) A board member shall be automatically removed from the board and a vacancy
 4 shall occur when:

5 (a) An auctioneer member of the board ceases to be a licensed auctioneer;

6 (b) A nonlicensed member of the board acquires a license regulated by the
 7 board;

8 (c) A board member enters a plea of guilty, an Alford plea, or a plea of no
 9 contest, or has been convicted of any felony, and the time for appeal has
 10 passed or the judgment of conviction has been finally affirmed on appeal;
 11 or

12 (d) A board member ceases to be a resident of the Commonwealth of Kentucky.

13 ➔Section 6. KRS 330.060 is amended to read as follows:

14 (1) Every applicant for licensure shall be at least eighteen (18) years of age, show
 15 proof of a high school diploma or equivalent, and, within the preceding five (5)
 16 years, shall not have committed any act that constitutes grounds for license
 17 suspension or revocation under this chapter.

18 (a) The board may waive the high school diploma or equivalent requirement
 19 for an apprentice, licensed prior to 1985, applying for an auctioneer license.

20 (b) Any ~~license~~[licenses] issued pursuant to this chapter shall be granted only to a
 21 ~~person~~[persons who are] found to be of good repute, trustworthy, and
 22 competent to transact the business for which the license was granted in[~~such~~]
 23 a manner ~~requisite~~[as] to ~~safeguarding~~[safeguard] the interest of the public.

24 (c) Effective July 1, 2010, an applicant for an apprentice auctioneer license
 25 shall have successfully completed at least eighty (80) hours of approved
 26 classroom instruction from a board-approved auction education provider.

27 (d) The board may waive the eighty (80) hours of approved classroom

instruction requirement if the applicant demonstrates sufficient previous auction experience and competency by affidavit or other evidence as required by the board.

(2) The board is authorized to require information from every applicant to determine the applicant's honesty and truthfulness.

(3) Every applicant shall successfully complete~~[In addition to proof of honesty, truthfulness, and good reputation,]~~ an examination, conducted by the board or its authorized representative~~[shall be held four (4) times each year, and an examination fee of seventy five dollars (\$75) shall be collected from each applicant for apprentice auctioneer and an examination fee of one hundred dollars (\$100) shall be collected from each applicant for auctioneer and from each applicant for livestock auctioneer, tobacco auctioneer, and auction house operator].~~

Every application for examination shall be submitted on board-prepared forms, and each applicant shall furnish pertinent background data as outlined on the forms.

(a) To defray the cost of administration of the examination, the board shall require each applicant to remit an examination fee established by administrative regulations promulgated by the board in accordance with KRS Chapter 13A.

(b) Examination fees shall be nonrefundable.

(c) If the applicant is unable to attend the scheduled exam, the examination fee shall be deferred to the next scheduled administration of the examination.

(d) Upon successful completion of the examination, the applicant shall apply for initial licensure within forty-five (45) days of receiving notice of successfully completing the examination~~[and shall defray the expenses of processing the application and of conducting the examination. The examinations for auctioneer and apprentice auctioneer shall include questions~~

on ethics, reading, writing, spelling, mathematics, elementary principles of land economics, and a general knowledge of the statutes of Kentucky relating to deeds, mortgages, contracts of sale, agency, leases, auctions, brokerage, and the provisions of this chapter. The examination for an auctioneer's license shall be of a more exacting nature and scope than the examination for an apprentice auctioneer. The examination for auction house operator license shall include those areas of knowledge which, in the discretion of the board, are appropriate to those seeking to operate auction houses. The examinations for livestock auctioneer and tobacco auctioneer shall include those areas of knowledge which, in the discretion of the board, are appropriate to those seeking a professional license to operate in those limited fields].

(e) The examination shall be of the scope and wording sufficient in the judgment of the board to establish the competency of the applicant to act as an auctioneer or other licensee regulated by the board.

(4) **If a** [However, no examination shall be required for the renewal of any present or future license, unless such] license has been revoked, suspended, or is allowed to expire without renewal[. In any of these cases], the board may[, in its discretion,] require the applicant to [take and] pass the written examination **or complete some form of board-approved auction education** before a [new] license may be issued.

(5) If a license has not been renewed within six (6) months of the expiration date, the board shall require a person to successfully complete the written examination before a license is issued.

(6) In addition, every nonresident applicant shall file an irrevocable consent that actions may be commenced against the applicant in any court of competent jurisdiction in the Commonwealth of Kentucky, by the service of any summons, process, or pleadings authorized by law on the authorized representative of the board. The consent shall stipulate and agree that the service of any summons,

process, or pleadings on the authorized representative shall be taken and held in all courts to be as valid and binding as if actual service had been made upon the applicant in Kentucky. In case any summons, process, or pleadings are served upon the authorized representative of the board, it shall be by duplicate copies, one (1) of which shall be retained in the office of the board, and the other immediately forwarded by certified mail, return receipt requested, to the last known business address of the applicant against whom the summons, process, or pleadings are directed.

➔ Section 7. KRS 330.070 is amended to read as follows:

(1) An apprentice auctioneer applying for an auctioneer license shall,~~[In addition to the other qualifications provided for by this chapter, every applicant for any license issued by the board shall be at least eighteen (18) years of age and hold a high school diploma or equivalent. In addition, but]~~ subject to the provisions of Section 6 of this Act:

(a) ~~[KRS 330.090, an applicant for an auctioneer's license shall]~~ Possess a current Kentucky apprentice auctioneer~~[auctioneer's]~~ license;

(b) Serve an~~[and shall have served a bona fide]~~ apprenticeship for a period of two (2) years as an apprentice auctioneer in Kentucky; and

(c) Submit a statement to the board, signed by the principal auctioneer, verifying that the applicant has participated in at least ten (10) auctions during the twenty-four (24) month period prior to application~~[, provided that any applicant for auctioneer's license whose apprentice license was granted prior to August 1, 1992, shall be required to serve an apprenticeship of but one (1) year].~~

(2) An apprentice auctioneer with an original license issued prior to June 30, 2010, shall be required to successfully complete the auctioneer examination.

(3) Effective July 1, 2010, an applicant for an apprentice auctioneer license shall be

required to successfully complete the auctioneer examination prior to being issued an apprentice license. No further examination shall be required prior to applying for an auctioneer license.

(a) An apprentice auctioneer shall apply for an auctioneer license after completing the required two (2) year apprenticeship and within five (5) years of being issued an apprentice license.

(b) If a licensed apprentice auctioneer does not apply for an auctioneer license within five (5) years of receiving an apprentice license, the apprentice license shall not be renewed.

(c) This subsection shall not apply to an apprentice auctioneer licensed prior to June 30, 2010.

(4) If an applicant for an auctioneer license resides in a state which does not have a current reciprocity agreement with the board, the board may waive the eighty (80) hour education requirement or the apprenticeship requirement, or both, if the applicant demonstrates sufficient previous auction experience and competency by affidavit or by other evidence as required by the board.

(5) An applicant for an auctioneer~~[auctioneer's]~~ license who has previously held an auctioneer~~[auctioneer's]~~ license which has been revoked, suspended, or which has expired without renewal may request, and the board may grant, a waiver of the requirement of possession of a current apprentice license.

(6)~~[(2)]~~ Every application for a license issued by the board~~[-, whether as an auctioneer, apprentice auctioneer, livestock auctioneer, tobacco auctioneer, or auction house operator,]~~ shall be submitted on forms prepared by the board. Each applicant shall furnish pertinent background data as outlined on those forms.

(7) The board shall promulgate administrative regulations in accordance with KRS Chapter 13A to establish an initial license fee and annual renewal license fee, neither of which shall exceed one hundred fifty dollars (\$150)~~[(3) The issuance~~

1 fee for each license issued pursuant to this chapter shall be not more than one
 2 hundred dollars (\$100) and the annual renewal fee for each license shall be not
 3 more than one hundred dollars (\$100)).

4 (a) All licenses shall expire on the thirtieth day of June ~~[thirtieth of each year]~~.

5 (b) Each license shall be renewed on or before the expiration date.

6 (c) In addition to the renewal fee, a late fee shall be established by
 7 administrative regulations promulgated by the board on each license
 8 renewed within six (6) months after the expiration date.

9 (d) In the absence of any reason or condition which might warrant the refusal of
 10 ~~[the]~~renewing a~~[of the]~~ license, and upon timely receipt of the renewal
 11 form~~[written request of the applicant]~~ and the annual fee~~[therefor]~~, the board
 12 shall issue a~~[new]~~ license for the~~[each]~~ ensuing year.

13 (8) ~~(a)~~~~[(4)]~~ Beginning with the renewal of licenses expiring on or after June 30,
 14 1993,~~]~~ The board may require as a condition precedent to the renewal of any
 15 license, that each licensee~~[all licensees]~~ complete continuing~~[auction]~~
 16 education up to ten (10) hours per license year~~[per licensee]~~. The board may
 17 impose different continuing~~[auction]~~ education requirements~~[, or none,]~~ upon
 18 different classifications of licenses~~[licensees]~~ under this chapter. The
 19 continuing~~[auction]~~ education requirements~~[provided for]~~ in this subsection
 20 shall not apply to those~~[individual]~~ auctioneers licensed prior to January 1,
 21 1980.

22 (b) A licensee who has not completed the required continuing education may,
 23 within the time period set forth in subsections (6) and (7) of this section,
 24 remit a fee established by administrative regulations promulgated by the
 25 board with the applicable renewal fees, and the continuing education
 26 reporting requirement shall be deferred to the next annual renewal. If the
 27 licensee fails to meet the continuing education requirement for the next

annual renewal, the licensee shall successfully complete the examination before renewal of his or her license.

(c) The board may require all licensees to complete a six (6) hour board-approved core course once every four (4) years, that includes the core subjects of Kentucky auction statutes and regulations, ethics, and any other subject matter deemed appropriate by the board.

~~(9)(5)~~ The board shall prepare and deliver to each licensee a **pocket** license ~~and pocket card~~. The ~~license and~~ pocket **license** ~~card~~ of the apprentice auctioneer shall contain the name and address of his or her principal auctioneer. The board shall also prepare and deliver a license to each auction house operator.

(a) Auction house operators shall display their licenses conspicuously and at all times in the auction house identified on the license ~~their place of business~~. ~~All other licenses shall be kept on file in the licensee's place of business.~~

(b) All licensees shall carry their pocket **licenses** ~~cards with them~~ when performing auctioneering tasks, to be shown upon request.

(c) A license or pocket license shall ~~Lost licenses or pocket cards will each~~ be replaced upon the request of ~~request by~~ the licensee and payment of a replacement fee established by administrative regulations promulgated by the board in accordance with KRS Chapter 13A ~~of fifteen dollars (\$15)~~.

~~(10)(6)~~ When an ~~any~~ apprentice auctioneer is discharged or **voluntarily** terminates employment with the auctioneer for any reason~~;~~,

(a) It shall be the immediate duty of the principal auctioneer to deliver ~~or mail by certified mail, return receipt requested,~~ to the board a written release ~~the license~~ of the apprentice auctioneer; **and**

(b) The apprentice auctioneer shall affiliate with a principal auctioneer within thirty (30) days by submitting to the board an affiliation letter signed by the new principal auctioneer and a fee established by administrative regulations

promulgated by the board in accordance with KRS Chapter 13A.

~~An~~ [It shall be unlawful for any] apprentice auctioneer *shall not* [to] perform any of the acts *regulated* [contemplated] by this chapter *until receiving* [either directly or indirectly, under authority of his or her license, until the apprentice auctioneer receives] a new license bearing a new principal auctioneer's name and address. [No more than one (1) license shall be issued to any apprentice auctioneer for the same period of time.]

~~(11)~~ [(7)] A licensee may place his or her license in escrow with the board if the licensee does not engage in any *board-regulated* auctioneering activity [or auction house operations] and continues to pay the annual renewal *license fee* [fees during the term of escrow].

(a) For each year the license is in escrow, a licensee shall be exempt from the contribution to the auctioneer's education, research, and recovery fund [described in KRS 330.192(1)(b)] and the continuing education requirement [described in subsection (4) of this section].

(b) To reactivate a license in escrow, the licensee *shall* [must] meet the current year's continuing education requirement [described in subsection (4) of this section] and pay a reactivation fee *and the annual renewal recovery fee, both of which shall be established by administrative regulations promulgated by the board in accordance with KRS Chapter 13A* [of one hundred dollars (\$100)].

~~(12)~~ [(8)] Notice in writing shall be given to the board by each licensee of any change of principal business location or [of] residence address within ten (10) days of *the* [such] change, *and* [In the event of change of business location address,] the board shall issue *an updated* [a new] license for the unexpired period. *The board may fine, suspend, or revoke the license of a licensee who does not notify the board of a change of address within ten (10) days* [A change of business location

without notification to the board within ten (10) days shall automatically suspend or revoke the license of such licensee, as may be ordered in the discretion of the board]. Changing a business [~~location~~] or a residence address[~~location~~] on its records shall entitle the board to collect a fee established by administrative regulations promulgated by the board in accordance with KRS Chapter 13A[~~ten dollars (\$10)~~].

➔ Section 8. KRS 330.095 is amended to read as follows:

(1) An individual holding an auctioneer license from the proper authority of a state, territory, or possession of the United States of America or the District of Columbia that has licensing requirements equal to or substantially equivalent to the requirements in this state, and where reciprocal licensing privileges are granted to residents of this state, may obtain an auctioneer license without examination and pre-license education if:

(a) The board has entered into a valid reciprocal agreement with the proper authority of the state, territory, or possession of the United States of America or the District of Columbia from which the nonresident applicant has a valid license;

(b) The applicant submits to the board the completed reciprocal application, including the irrevocable consent described in Section 6 of this Act, and the license and exam verification from a reciprocal state; and

(c) The applicant pays the applicable reciprocal fee:

1. The initial reciprocal fee shall be the greater of:

a. The sum total of the initial license and recovery fees charged by the applicant's reciprocal state to a Kentucky resident for an initial reciprocal license; or

b. The sum total of the current initial license and recovery fees assessed by the board to a nonreciprocal Kentucky licensee; and

1 2. The renewal reciprocal fee shall be the greater of:

2 a. The sum total of the renewal license and recovery fees charged
 3 by the applicant's reciprocal state to a Kentucky resident for a
 4 renewal reciprocal license; or

5 b. The sum total of the current renewal license and recovery fees
 6 assessed by the board to a nonreciprocal Kentucky licensee.

7 (2) If a licensee is issued a Kentucky reciprocal license via a jurisdiction that has
 8 continuing education requirements, the Kentucky reciprocal licensee shall be
 9 exempt from reporting continuing education. If a licensee is issued a Kentucky
 10 reciprocal license via a jurisdiction that does not have a continuing education
 11 requirement, the Kentucky reciprocal licensee shall report continuing education
 12 pursuant to Section 7 of this Act.

13 (3) Disciplinary sanctions against a reciprocal licensee imposed by any licensure
 14 jurisdiction may be grounds for disciplinary action by the board.

15 ~~[Any nonresident applicant who is a licensee in and who resides in another state or~~
 16 ~~country where the qualifications prescribed at the time of licensing were, in the opinion of~~
 17 ~~the board, equal to those prescribed in the Commonwealth of Kentucky at the date of~~
 18 ~~application, and where reciprocal licensing privileges satisfactory to the board are granted~~
 19 ~~to licensees and residents of the Commonwealth, may be granted a license without an~~
 20 ~~examination. In addition to the fees set out in KRS 330.090, a reciprocal licensee fee shall~~
 21 ~~be collected from each applicant meeting the above requirements. The fee shall be the~~
 22 ~~amount of the fee charged by the applicant's state or country to a Kentucky resident~~
 23 ~~applying for a reciprocal license or one hundred dollars (\$100), whichever is greater.]~~

24 ➔Section 9. KRS 330.100 is amended to read as follows:

25 (1) Every auctioneer licensed under this chapter shall maintain a definite place of
 26 business in the Commonwealth, except that a nonresident holding a valid
 27 Kentucky auctioneer license~~[as hereinafter provided, and shall erect and maintain a~~

sign in a conspicuous place on the premises at or near the outside entrance to the principal office and all branch offices. The sign shall be written in clear and legible letters of not less than two (2) inches in height, and shall clearly show his name and indicate that he is an auctioneer. The sign shall be placed so that it can easily be observed and read by anyone entering the place of business; provided, however, that if the auctioneer is a nonresident,] ***is not required***[it is not necessary for him] to maintain an active place of business in the Commonwealth if [he maintains] a place of business ***is maintained*** in the ***nonresident's*** state[where he was originally licensed].

(2) Every auction house operator licensed under this chapter shall maintain a definite place of business in the Commonwealth, and shall erect and maintain a sign in a conspicuous place on the premises at or near the outside entrance to all fixed locations. The sign shall be written in clear and legible letters of not less than two (2) inches in height, and shall contain the name ***and license number*** of the auction house operator,[the fact that he is licensed,] and the name of the auction house, if different than the name of the operator. The sign shall be placed so that it can easily be observed and read by anyone entering the auction house.

(3) ***All claims or disputes of auctions conducted in the Commonwealth of Kentucky and auctions of real or personal property located in the Commonwealth of Kentucky shall be adjudicated by the courts of this state***[Every livestock auctioneer and tobacco auctioneer licensed under this chapter shall conform to the provisions of subsection (1) of this section. If the livestock auctioneer or tobacco auctioneer does not wish to maintain a separate and definite place of business, he may use one (1) of the fixed base locations where he is operating as such place of business. The board shall be kept advised as to the location pursuant to KRS 330.070].

➔SECTION 10. A NEW SECTION OF KRS CHAPTER 330 IS CREATED TO

1 READ AS FOLLOWS:

- 2 (1) Any advertising pertaining to an auction shall include the name of the managing
3 principal auctioneer for the auction and indicate that he or she is an auctioneer,
4 except that any advertising pertaining to an auction conducted at an auction
5 house operated by a licensed auction house operator shall include the name of
6 the auction house operator and indicate that he or she is an auction house
7 operator or "AHO." The advertising requirements in this subsection shall not
8 apply to directional signs if a sign with the name of the managing principal
9 auctioneer for the auction or the auction house operator is placed so that it can
10 be easily observed and clearly read by anyone entering the auction site.
- 11 (2) The existence and amount of any buyer's fee or buyer's premium shall be clearly
12 disclosed in all terms and conditions included in any advertisements for a
13 particular auction and in all terms and conditions presented or made available
14 prior to the start of a particular auction.
- 15 (3) (a) An auction shall not be advertised as "Court Ordered" or use similar
16 wording implying court action unless:
- 17 1. At least seventy-five percent (75%) of the items or lots in the auction
18 are being offered pursuant to one (1) or more federal, state, or local
19 court orders; and
- 20 2. The items or lots were clearly not purchased or attained for the
21 purpose of resale at auction.
- 22 (b) The advertising shall clearly contain an explanation of the court order
23 including identification of the court.
- 24 (c) If less than one hundred percent (100%) of the items or lots being offered at
25 the auction are pursuant to one (1) or more court orders, then the
26 advertising shall clearly indicate that the auction is "With Additions" or use
27 similar wording.

1 (d) This subsection shall not prohibit clear, nonmisleading advertising of the
 2 inclusion of specific real or personal property being offered pursuant to a
 3 federal, state, or local court order in an auction if that real or personal
 4 property is offered pursuant to a federal, state, or local court order and was
 5 clearly not purchased or attained for the purpose of resale at auction.

6 (4) (a) An auction shall not be advertised as a "Bankruptcy Auction" or "Items
 7 from Bankruptcy" or use similar wording or any combination thereof
 8 unless:

9 1. The auction consists of at least seventy-five percent (75%) of items or
 10 lots to be offered for one (1) or more open and working bankruptcies
 11 under the jurisdiction of the United States Bankruptcy Court;

12 2. The items or lots were clearly not purchased or attained for the
 13 purpose of resale at auction; and

14 3. The advertising clearly includes the United States Bankruptcy Court
 15 case number or numbers.

16 (b) If less than one hundred percent (100%) of the items or lots being offered at
 17 the auction are for one (1) or more bankruptcies, then the advertising shall
 18 clearly indicate that the auction is "With Additions" or use similar wording.

19 (c) This subsection shall not prohibit clear, nonmisleading advertising of the
 20 inclusion of specific real or personal property being offered for a
 21 bankruptcy in an auction if that real or personal property is being offered
 22 for one (1) or more open and working bankruptcies under the jurisdiction
 23 of the United States Bankruptcy Court, was not purchased or attained for
 24 the purpose of resale at auction, and the advertising clearly includes the
 25 United States Bankruptcy Court case number or numbers.

26 (5) (a) An auction shall not be advertised as a "Seized Property Auction,"
 27 "Confiscated Property Auction," or "Forfeiture Property Auction" or

utilize similar wording or any combination thereof implying governmental action unless:

1. The auction contains at least seventy-five percent (75%) of the items or lots to be offered pursuant to one (1) or more federal, state, or local governmental actions in which the real or personal property is being offered directly for the federal, state, or local governmental entity;

2. The items or lots were clearly not purchased or attained for the purpose of resale at auction; and

3. The advertising clearly contains an explanation of the governmental action, including identification of the governmental entity.

(b) If less than one hundred percent (100%) of the items or lots being offered at the auction are from one (1) or more governmental actions, then the advertising shall clearly indicate that the auction is "With Additions" or use similar wording.

(c) This subsection shall not prohibit clear, nonmisleading advertising of the inclusion of specific real or personal property being offered pursuant to a federal, state, or local governmental action in an auction if the real or personal property is offered directly for a federal, state, or local governmental entity and was clearly not purchased or attained for the purpose of resale at auction.

(6) (a) An auction shall not be advertised as a "Liquidation Auction," "Surplus Auction," "Inventory Reduction Auction," or "Going Out of Business Auction" or use similar wording or any combination thereof unless:

1. The auction contains at least seventy-five percent (75%) of the items or lots to be offered for one (1) or more liquidation, surplus, inventory reduction, or going out of business situations in which the real or personal property belongs to a company or other business entity and is

being offered as "out of stock"; and

2. The items or lots were clearly not purchased or attained for the purpose of resale at auction.

(b) If less than one hundred percent (100%) of the items or lots being offered at the auction are from one (1) or more liquidation, surplus, inventory reduction, or going out of business situations, then the advertising shall clearly indicate that the auction is "With Additions" or use similar wording.

(c) This subsection shall not prohibit clear, nonmisleading advertising of the inclusion of specific real or personal property being offered for a liquidation, surplus, inventory reduction, or going out of business situation, or similar wording or any combination thereof, in an auction if the real or personal property is being offered for a liquidation, surplus, inventory reduction, or going out of business situation in which the real or personal property belongs to a company or other business entity, is being offered as "out of stock," and was clearly not purchased or attained for the purpose of resale at auction.

(7) (a) An auction shall not be advertised as an "Estate Auction," "Estate Settlement," or "To Settle the Estate of ... Auction" or use similar wording or any combination thereof unless:

1. At least seventy-five percent (75%) of the items or lots in the auction are being offered for one (1) or more estates in which the real or personal property belongs to the estate of one (1) or more deceased persons and is being offered by the direction and authority of the authorized executor or administrator, or by court order, or by the direction and authority of one (1) or more direct heirs; and

2. The items or lots were clearly not purchased or attained for the purpose of resale at auction.

1 (b) If less than one hundred percent (100%) of the items or lots being offered at
 2 the auction are from one (1) or more estates, then the advertising shall
 3 clearly indicate that the auction is "With Additions" or use similar wording.

4 (c) This subsection shall not prohibit clear, nonmisleading advertising of the
 5 inclusion of real or personal property offered for an estate in an auction if
 6 the real or personal property is being offered for an estate as set forth in this
 7 subsection.

8 (8) (a) An auction shall not be advertised as a "Living Estate Auction" or "To
 9 Settle the Living Estate of ... Auction" or use similar wording or any
 10 combination thereof unless:

11 1. At least seventy-five percent (75%) of the items or lots in the auction
 12 are being offered for one (1) or more living estates in which the real or
 13 personal property belongs to a household that is in transition due to a
 14 life-changing situation, including but not limited to one (1) or more
 15 members of the household moving into a retirement home, nursing
 16 home, or assisted living home or combining the household with
 17 another; and

18 2. The items or lots were clearly not purchased or attained for the
 19 purpose of resale at auction.

20 (b) If less than one hundred percent (100%) of the items or lots being offered at
 21 the auction are from one (1) or more living estates, then the advertising
 22 shall clearly indicate that the auction is "With Additions" or use similar
 23 wording.

24 (c) This subsection shall not prohibit clear, nonmisleading advertising of the
 25 inclusion of real or personal property being offered for a living estate in an
 26 auction if the real or personal property is being offered for a living estate
 27 pursuant to this subsection.

1 ➔ Section 11. KRS 330.110 is amended to read as follows:

2 The board may suspend for a period up to five (5)~~[four (4)]~~ years or revoke the license of
 3 any licensee, or levy fines not to exceed two thousand dollars (\$2,000)~~[five hundred~~
 4 ~~dollars (\$500)]~~ against any licensee, or place any licensee on probation for a period of up
 5 to five (5)~~[three (3)]~~ years, or require successful passage of any examination administered
 6 by the board, or require successful completion of any course of auction study or auction
 7 seminars designated by the board, or issue a formal reprimand, or order any combination
 8 of the above, for violation by any licensee of any of the provisions of this chapter, or for
 9 any of the following causes:

- 10 (1) Obtaining a license through false or fraudulent representation;
- 11 (2) Making any substantial misrepresentation;
- 12 (3) Pursuing a continued and flagrant course of misrepresentation or intentionally
 13 making false promises or disseminating misleading information through agents or
 14 advertising or otherwise;
- 15 (4) Accepting valuable consideration as an apprentice auctioneer for the performance of
 16 any of the acts specified in this chapter, from any person, except his or her principal
 17 auctioneer;
- 18 (5) Failing to account for or remit, within a reasonable time, any money belonging to
 19 others that comes into the licensee's possession, commingling funds of others with
 20 the licensee's own funds, or failing to keep the~~[such]~~ funds of others in an escrow
 21 or trustee account;
- 22 (6) Paying valuable consideration to any person for services performed in violation of
 23 this chapter, or procuring, permitting, aiding, or abetting any unlicensed person
 24 acting in violation of any of the provisions of this chapter;
- 25 (7) Entering a plea of guilty, an Alford plea, or a plea of no contest or being
 26 convicted of any felony, and the time for appeal has passed or the judgment of
 27 conviction has been finally affirmed on appeal~~[Being convicted in a court of~~

- 1 competent jurisdiction of this or any other state of a criminal offense involving
 2 moral turpitude or a felony];
- 3 (8) Violation of any provision of this chapter or any administrative regulation
 4 promulgated by the board;
- 5 (9) Failure to furnish voluntarily at the time of execution, copies of all written
 6 instruments prepared by any licensee to each signatory of the written
 7 instrument~~[the auctioneer, apprentice auctioneer, or auction house operator];~~
- 8 (10) Any conduct of a licensee which demonstrates bad faith, dishonesty,
 9 incompetence~~[incompetency]~~, or untruthfulness;
- 10 (11) Any other conduct that constitutes improper, fraudulent, dishonest, or negligent
 11 dealings;
- 12 (12) Failure to enter into a binding written auction listing contract with the seller or
 13 with the seller's duly authorized agent prior to advertising, promoting, or offering
 14 any real or personal property by or at auction~~[Failing prior to the sale at public~~
 15 ~~auction or prior to publicly advertising any goods for sale or offering any goods for~~
 16 ~~sale to enter into a written contract with the owner or consignee of any property to~~
 17 ~~be sold, containing the terms and conditions upon which the licensee receives the~~
 18 ~~property for sale];~~
- 19 (13) Failure to provide a receipt to all persons consigning personal property with any
 20 licensee for auction~~;~~~~[After January 1, 1993, failure of any licensee to insert in any~~
 21 ~~advertising pertaining to a particular sale the name of the auctioneer.]~~
- 22 (14) Failure to establish and maintain, for a minimum of five (5) years from final
 23 settlement, complete and correct written or electronic records and accounts of all
 24 auction transactions, including:
- 25 (a) Listing contracts, including the name and address of the seller;
 26 (b) Written purchase contracts;
 27 (c) Descriptive inventory and final bid amounts of all items or lots offered;

1 (d) Buyer registration records; and

2 (e) Settlement records, including all moneys received and disbursed and escrow
 3 account activity; or

4 (15) Failure of any licensee to present any auction-related information, including but
 5 not limited to advertisements, listing contracts, purchase contracts, clerking
 6 records, buyer registration records, settlement records, escrow account
 7 information, license, or any other auction-related information, subsequent to a
 8 request by a board compliance officer or board counsel.

9 ➔ Section 12. KRS 330.115 is amended to read as follows:

10 (1) All complaints against licensees shall~~[must]~~ be submitted to the board ~~[in~~
 11 ~~triplicate,]~~ on forms furnished by the board. The complaint shall~~[must]~~ state facts
 12 which, if true, would present~~[make out]~~ a prima facie case against the licensee.

13 ~~(2) [A copy of the complaint, exhibits attached thereto, and any subsequent pleadings,~~
 14 ~~must be served on the licensee defendant, by the complainant, at the licensee's last~~
 15 ~~known address and must show certification that there has been service by writing to~~
 16 ~~the last known address.~~

17 ~~(3) —]The board shall send the answer form and a copy of the complaint to the licensee~~
 18 ~~by certified mail[defendant licensee must file with the board an answer to the~~
 19 ~~complaint, in triplicate, and properly notarized, on forms secured from the board~~
 20 ~~offices]. The completed answer form shall~~[must]~~ be returned to the board within~~
 21 ~~twenty (20) working days from the date of receipt.[and] The board shall forward a~~
 22 ~~copy of the answer to the complainant[, exhibits attached thereto, as well as any~~
 23 ~~subsequent pleadings, must be served on complainant and must show certification~~
 24 ~~that there has been service by writing to the last known address. Any and all further~~
 25 ~~pleadings in the matter filed with the board by either party must show that a copy~~
 26 ~~has been furnished to the opposing party or parties].~~

27 ➔ Section 13. KRS 330.120 is amended to read as follows:

1 (1) The board may upon its own motion, and shall upon the verified written complaint
 2 of any person, investigate the actions of any licensee~~[, or auction house operator,]~~ or
 3 any person who assumes to act as a licensee if the complaint, or complaint together
 4 with other evidence presented in connection with it, presents~~[makes out]~~ a prima
 5 facie case of a violation of this chapter. If a prima facie case is not established or the
 6 violation is deemed inconsequential, the board may immediately dismiss the
 7 complaint.

8 (2) If, after an investigation that includes opportunity for the licensee to respond, the
 9 board determines that a violation took place but was not of a serious nature, it may
 10 issue a written admonishment to the licensee. A copy of the admonishment shall be
 11 placed in the ~~[permanent]~~ file of the licensee. The licensee shall have the right to
 12 file a response to the admonishment within thirty (30) days of its receipt and to have
 13 the response placed in the ~~[permanent]~~ licensure file. The licensee may
 14 alternatively, within thirty (30) days of the receipt, file a request for hearing with the
 15 board. Upon receipt of this request, the board shall set aside the written
 16 admonishment and set the matter for hearing under the provisions of KRS Chapter
 17 13B.

18 ➔Section 14. KRS 330.130 is amended to read as follows:

19 (1) Before denying an application for license or before imposing any disciplinary action
 20 authorized under KRS 330.110, the board shall set the matter~~[down]~~ for an
 21 administrative hearing, if a hearing is requested by the applicant or licensee. The
 22 hearing shall be conducted in accordance with KRS Chapter 13B. If~~[the applicant~~
 23 ~~or licensee who is]~~ the subject of the hearing is an apprentice auctioneer, the board
 24 shall also provide notification of the hearing to the auctioneer employing him or
 25 whose employ he is about to enter, by sending~~[mailing]~~ notice by certified mail,
 26 return receipt requested, to the auctioneer's last known business address.

27 (2) Any party aggrieved by a final order of the board refusing to grant a license or

1 suspending or revoking a license may appeal the final order to the Circuit Court of
 2 the county in which the applicant or licensee resides~~[office of the board is located]~~,
 3 in accordance with KRS Chapter 13B.

4 ➔ Section 15. KRS 330.170 is amended to read as follows:

5 (1) Any licensee whose~~[who has had his]~~ license has been revoked shall not be issued
 6 another license for a period of five (5) years from the date of revocation.

7 (2) The revocation of an auctioneer's license shall automatically suspend every
 8 apprentice auctioneer's license granted to any person employed or supervised~~[by~~
 9 ~~virtue of his employment]~~ by the auctioneer whose license has been revoked. The
 10 apprentice auctioneer may retain his license by transferring to the employment of
 11 another licensed auctioneer within thirty (30) days.

12 ➔ Section 16. KRS 330.180 is amended to read as follows:

13 The board shall adopt a seal by which it shall authenticate its proceedings. Copies of all
 14 records and papers in the office of the board, duly certified and authenticated by the seal
 15 of the board, shall be received in evidence in all courts equally and with like effect as the
 16 original. Public inspection of ~~[all]~~ records kept in the office of the board under the
 17 authority of this chapter shall be ~~[as]~~ permitted by applicable provisions of the Open
 18 Records Act of the Commonwealth of Kentucky, KRS 61.870 to 61.884~~[relating to open~~
 19 ~~records, and under guidelines as shall be prescribed by the board pursuant to those~~
 20 ~~provisions]~~.

21 ➔ Section 17. KRS 330.190 is amended to read as follows:

22 (1) No person, engaged in the business of or acting in the capacity of any licensee under
 23 this chapter shall bring or maintain any action in the courts of the Commonwealth
 24 for the collection of compensation for any services performed as ~~[such]~~ a licensee
 25 without first ~~[alleging and]~~ proving that he or she was duly licensed at the time the
 26 alleged cause of action arose.

27 (2) No apprentice auctioneer shall have the right to institute a suit in his or her own

1 name for the recovery of a commission, fee, or compensation for services as an
 2 apprentice auctioneer, but any such act shall be instituted and brought by the
 3 licensed auctioneer employing an apprentice auctioneer; provided, however, that
 4 this subsection shall not be construed so as to prevent a licensed apprentice
 5 auctioneer from suing his or her employing auctioneer for any compensation, fees,
 6 or commissions due ~~him~~ from the~~an~~ auctioneer.

7 ➔Section 18. KRS 330.192 is amended to read as follows:

8 (1) (a) There is hereby created and established in the State Treasury the auctioneer's
 9 education, research, and recovery fund.

10 (b) ~~[In addition to the license fees provided for in KRS 330.070, upon renewal of~~
 11 ~~every license issued pursuant to this chapter, the board shall charge every~~
 12 ~~licensee an amount not to exceed thirty dollars (\$30) per year to be included in~~
 13 ~~the auctioneer's education, research, and recovery fund. Every original~~
 14 ~~applicant for apprentice or auctioneer's license, and every applicant for an~~
 15 ~~auction house operator's license on and after July 15, 1982, shall likewise~~
 16 ~~submit to the board an additional fee of thirty dollars (\$30) to be deposited in~~
 17 ~~the auctioneer's education, research, and recovery fund and shall also be~~
 18 ~~subjected thereafter to an annual renewal fee as of the regular renewal date.~~

19 (e)} In addition to the license fees established~~[provided for]~~ in KRS 330.070, and
 20 Section 8 of this Act, the board~~[, based upon its own discretion as to need,]~~
 21 may assess each licensee a~~[upon]~~ renewal recovery fee established by
 22 administrative regulations promulgated by the board in accordance with
 23 KRS Chapter 13A~~[an amount equal to or less than thirty dollars (\$30) per~~
 24 ~~year, or nothing, but not more]. Each initial~~[original]~~ applicant shall pay an~~
 25 initial recovery fee established by administrative regulations promulgated by
 26 the board in accordance with KRS Chapter 13A~~[the original amount of thirty~~
 27 ~~dollars (\$30), but upon renewal shall pay the same fee as other licensees].~~

1 (2) The purposes of the auctioneer's education, research, and recovery fund shall be as
2 follows:

3 (a) When a licensee has been duly found guilty of violating ~~{any}~~ one (1) or more
4 of the provisions of this chapter~~[KRS 330.110]~~, or ~~{any}~~ one (1) or more of
5 the administrative regulations duly promulgated by the board, and upon the
6 conclusion of a final order entered by the board or by the courts, if appealed,
7 the board is authorized to pay to the aggrieved party~~[person or persons]~~ an
8 ~~{aggregate}~~ amount not to exceed fifty thousand dollars (\$50,000) against any
9 one (1) licensee, ~~if provided that~~ the licensee has refused to pay the~~[such]~~
10 claim within ~~{a period of}~~ twenty (20) days of entry of a final order and
11 provided further that the amount or amounts of money in question are certain
12 and liquidated.

13 (b) The board shall maintain a minimum ~~{level}~~ of five hundred thousand dollars
14 (\$500,000) for recovery and guaranty purposes. These funds may be invested
15 and reinvested in the same manner as funds of the State Employees'
16 Retirement System and the interest from said investments shall be deposited
17 to the credit of the research and recovery fund, or, in the discretion of the
18 board, to the agency fund account as set out in KRS 330.050(6). Sufficient
19 liquidity, however, shall~~[will]~~ be maintained so that ~~{there will be}~~ money is
20 available to satisfy ~~{any and}~~ all claims which may be processed through the
21 board by means of administrative hearing as outlined in this chapter.

22 (c) The board~~[, in its discretion,]~~ may use ~~{any}~~ funds in excess of ~~{the}~~ five
23 hundred thousand dollars~~[dollar]~~ (\$500,000)~~[level]~~, ~~{regardless of}~~ whether
24 ~~{it is}~~ from the auctioneer's education, research, and recovery fund fees or
25 accrued interest thereon, for any of the following purposes:

26 1. To advance~~[carry out the advancement of]~~ education and research in the
27 auction field for the benefit of those licensed under the provisions of this

- 1 chapter and to improve and make more~~[the improvement and making~~
2 ~~even more]~~ efficient the auction industry~~[as such]~~;
 - 3 2. To underwrite educational seminars, caravans, and other forms of
4 educational projects for the general benefit~~[use and benefit generally]~~ of
5 ~~[auctioneer]~~ licensees;
 - 6 3. To establish an auction chair or courses at Kentucky state institutions of
7 higher learning for the purpose of making college or university level
8 ~~[such]~~ courses available to licensees and the general public~~[who may~~
9 ~~seek same on a college or university level]~~;
 - 10 4. To contract for a particular research project in the auction field for the
11 Commonwealth of Kentucky;
 - 12 5. To sponsor, contract for, and to underwrite~~[any and]~~ all other
13 educational and research projects that contribute to~~[of a similar nature~~
14 ~~having to do with]~~ the advancement of the auction field in Kentucky;
 - 15 6. To cooperate with associations of auctioneers and any other groups for
16 the enlightenment and advancement of Kentucky licensees~~[the~~
17 ~~auctioneer licensees of Kentucky]~~~~[and]~~
 - 18 7. To increase the level of the auctioneer's education, research, and
19 recovery fund above five hundred thousand dollars (\$500,000); and
 - 20 8. To augment the regular trust and agency account of the board.
- 21 (3) (a) ~~If [In the event that]~~ a licensee is found guilty of one (1) or more provisions of
22 this chapter~~[KRS 330.110]~~ or of violating one (1) or more of the
23 administrative regulations of the board, and if the amount of the money lost by
24 the aggrieved party or parties is in dispute or cannot be determined accurately,
25 then the amount of damages shall be determined by the~~[a]~~ Circuit Court in the
26 county where the alleged violation took place, provided that the board has
27 previously determined that a violation of the license laws or of the

1 administrative regulations has occurred and a final order has been entered.

2 (b) If ~~{such}~~ an order has been entered and the license rights of the licensee have
 3 been finally adjudicated, then the local Circuit Court shall determine~~[make a~~
 4 ~~finding as to]~~ the monetary damages due from~~[growing out of]~~ the aforesaid
 5 violation or violations.

6 (c) When a final order has been entered by the Circuit Court, Court of Appeals, or
 7 Supreme Court, and upon certification to the board, the aggrieved party or
 8 parties shall be paid an amount~~[such amount or amounts in the aggregate]~~ not
 9 to exceed fifty thousand dollars (\$50,000) by the board, and the license held
 10 by the licensee against whom the claim was made by the aggrieved party shall
 11 be suspended at least until ~~{such time as}~~ the licensee has reimbursed the
 12 auctioneer's education, research, and recovery fund for all amounts paid to the
 13 aggrieved party due to the violation of the licensee.

14 (d) When, upon the final order of the court, the board has paid from the
 15 auctioneer's education, research, and recovery fund any sum to the aggrieved
 16 party, the board shall be subrogated to all of the rights of the aggrieved party
 17 to the extent of the payment and the aggrieved party shall, to the extent of the
 18 payment, assign his right, title, and interest in the judgment to the
 19 board~~[commission]~~.

20 (e) ~~[Any funds in excess of the five hundred thousand dollar (\$500,000) level and~~
 21 ~~which are not being currently used, may be invested and reinvested as set forth~~
 22 ~~in subsection (2)(b) of this section, or, in the discretion of the board, may be~~
 23 ~~utilized for any of the purposes enumerated in subsection (2)(c) of this~~
 24 ~~section.~~

25 (f) ~~}]~~ All ~~{the}~~ claims for monetary damages or relief from the auctioneer's
 26 education, research, and recovery fund shall~~[must]~~ be made in writing and~~[on~~
 27 ~~a proof of loss form]~~ submitted to the board within twelve (12)~~[six (6)]~~

months of the act of the auctioneer giving rise to the loss. Failure to file a claim~~[such claims]~~ within the twelve (12)~~[six (6)]~~ month period shall bar the claim. Additional evidence shall~~[will]~~ be submitted by the claimant if required by the board.

(f)~~(g)~~ Notwithstanding any other provisions of this chapter, no unreimbursed amount greater than fifty thousand dollars (\$50,000) shall be paid by the board on account of any one (1) licensee, no matter over how long a time, or for how many claims, and no matter what the number of claimants be or the size of such claims, individually or in the aggregate. Should the licensee reimburse the fund for all amounts paid, then future claims timely filed with the board concerning different matters may be received pursuant to this section.

(g)~~(h)~~ No claims shall be approved under this section for amounts which, in the aggregate, exceed the maximum payable on account of any one (1) licensee in effect at the time of the act or acts of the licensee giving rise to the claims, except to the extent of said maximum. Statutory increases in the maximum set out in this section do not apply retroactively.

(4) All categories of licensees under this chapter are covered under the provisions of this section for the benefit and protection of the public.

(5) This section is not intended to substitute for, circumvent, or duplicate other remedies existing at law or otherwise for claimants or potential claimants, but constitutes a last resort for aggrieved persons who would not, but for the provisions of this section, be able to recover their losses by any other means available. The board shall have full discretion to require that claimants exhaust all other remedies prior to proceeding under this section, including, but not limited to, the remedy of obtaining a judgment by all diligent and appropriate means.

➔Section 19. KRS 330.210 is amended to read as follows:

(1) Notwithstanding any contrary provisions of law and in furtherance of the policies

set forth in KRS 355.2-328, at any auction sale of horses, the auctioneer:

(a)[(1)] May receive bids from the seller, consignor, or his agent, disclosed or undisclosed, if notice has been given in the terms and conditions governing the sale, or otherwise, that liberty for such bidding has been reserved by seller;

(b)[(2)] Shall conduct the sale with respect to each lot or parcel on a with-reserve basis unless the seller has authorized the auctioneer, in writing, to conduct the sale on a without-reserve basis, in which event the auctioneer shall announce, in explicit terms, that the goods are being sold without reserve; and

(c)[(3)] Shall not be required to announce at any with-reserve sale when the reserve is attained.

(2) Notwithstanding any other provision of this chapter, the following shall not apply to auctions or auctioneers participating in an auction regarding the sale, lease, or exchange of an equine as defined in KRS 230.357(1):

(a) The advertising requirements set forth in subsections (1), (2), and (7) of Section 10 of this Act;

(b) The causes justifying disciplinary action set forth in subsections (12), (13), (14), and (15) of Section 11 of this Act; or

(c) The provisions regulating absolute auctions and reserve auctions set forth in subsections (5) and (7) of Section 20 of this Act.

➔ Section 20. KRS 330.220 is amended to read as follows:

(1) If real or personal property is offered in lots or parcels in a sale by auction, each lot or parcel shall be the subject of a separate sale. This subsection shall not preclude real or personal property from being offered for bidding individually or in some form or combination.

(2) Unless otherwise provided in the conditions of sale for auctions regarding horses or any interests therein, a sale by auction is complete when the auctioneer so

announces by the fall of the hammer, announcing the item sold, and the successful bidder's identification or in other customary manner. If it becomes immediately apparent at the close of the bidding that the auctioneer and a bid assistant or ringman have acknowledged the same bid from different bidders, the auctioneer may continue the bidding between the disputed bidders. When a bid is made while the auctioneer is in the process of completing the sale by auction, the auctioneer may continue the bidding or declare the real or personal property sold under the bid on which the hammer was falling.

(3) No auction shall be advertised as "absolute" nor shall any advertising contain the words "absolute auction" or the word "absolute" or words with similar meaning nor shall any licensee offer or sell any real or personal property[goods] at absolute auction unless:

(a) There are no liens or encumbrances on the real or personal property[goods], except property[current] tax obligations, easements, or restrictions of record, in favor of any person, firm, or corporation other than the seller, or unless each and every holder of each and every lien and encumbrance, by execution of the auction listing contract, or otherwise furnishing to the auctioneer written evidence of a binding commitment therefor, shall have agreed to the unqualified acceptance of the highest bid for the property, without regard to the amount of the highest bid or the identity of the high bidder; or, alternatively, that a financially responsible person, firm, or corporation, by execution of the auction listing contract or by otherwise furnishing to the auctioneer written evidence of a binding commitment therefor, shall have absolutely guaranteed the forthwith and complete discharge and satisfaction of any and all liens and encumbrances immediately after the sale or at the closing, without regard to the amount of the highest bid received, or the identity of the high bidder; and

1 (b) There is the bona fide intention at the time of the advertising and at the time
 2 of the auction~~[-sale,]~~ to transfer ownership of the real or personal
 3 property~~[goods]~~, regardless of the amount of the highest and last bid, to the
 4 high bidder, that intent existing without reliance on any agreement that any
 5 particular bid or bid level must be made or be reached, below which level the
 6 real or personal property~~[goods]~~ would not be transferred to the high bidder;
 7 and

8 (c) The auction listing contract contains a binding requirement that the
 9 auction~~[-sale]~~ be conducted without reserve, and includes~~[by specific~~
 10 ~~inclusion of]~~ an acknowledgment ~~[by the seller]~~ that the seller, or anyone
 11 acting upon behalf of the seller, shall not bid at the absolute auction, or
 12 otherwise participate in the bidding process.

13 ~~(4)~~~~[(2)]~~ Compliance with subsection ~~(3)~~~~[(1)]~~ of this section shall not prohibit:

14 (a) A secured party or other lienholder who is not the seller from bidding at an
 15 absolute auction~~[-sale]~~, providing that such bidding does not constitute, nor is
 16 it tantamount to the direct or indirect establishment or agreement to the
 17 establishment of a reserve price on the real or personal property~~[goods]~~ by
 18 the seller or by the auctioneer, or by anyone aiding or assisting, or acting upon
 19 behalf of, the seller or the auctioneer; or

20 (b) Any individual party to the dissolution of any marriage, partnership, or
 21 corporation from bidding as an individual entity apart from the selling entity,
 22 on real or personal property~~[goods]~~ being sold at auction pursuant to that
 23 dissolution; or

24 (c) Any individual party or heir of a deceased person's bona fide estate from
 25 bidding as an individual entity, apart from the selling entity, on real or
 26 personal property being offered at auction pursuant to that estate
 27 settlement; or

1 (d) The inclusion of nonmisleading advertising of certain real or personal
 2 property~~[goods]~~ to be sold at "absolute auction" and the nonmisleading
 3 advertising of certain real or personal property~~[goods]~~ to be offered~~[sold]~~ at
 4 auction with reserve, within the same advertisement, or for sale at the same
 5 date and place, providing that advertisement shall make clearly apparent
 6 through equal or appropriate emphasis, which real or personal property
 7 is~~[goods are]~~ being offered~~[sold]~~ by each method.

8 (5)~~[(3)]~~ Any auction sale is, without requirement of announcement at any time,
 9 presumed to be with reserve unless the real or personal property is~~[goods are]~~ in
 10 explicit terms offered~~[put up]~~ at absolute auction. An auction without reserve
 11 means an absolute auction. An auction with reserve means the real or personal
 12 property~~[goods]~~ may be offered~~[put up]~~ subject to the seller's confirmation or
 13 subject to a certain reserve price. In an auction with reserve, the auctioneer may
 14 withdraw the real or personal property at any time until he or she announces
 15 completion of the sale. In an absolute auction, after the auctioneer calls for bids
 16 on an article, lot, or parcel, that article, lot, or parcel shall not be withdrawn
 17 unless no bid is made within a reasonable time. At both reserve auctions and
 18 without reserve auctions, the auctioneer may establish reasonable bid increments
 19 once an opening bid has been offered.

20 (6)~~[(4)]~~ (a) The provisions of this chapter shall not prohibit any licensee from ~~{bona~~
 21 ~~fide}~~ bidding on his or her own behalf at any auction sale, whether absolute or
 22 with reserve, ~~if~~~~[provided that]~~ his or her option to do so has~~[shall have]~~ been
 23 fully disclosed, including disclosure to the seller.

24 (b) Except as provided in subsection (4)~~[(2)]~~ of this section, the seller may not bid
 25 at an absolute auction, nor may anyone bid upon his or her behalf. No
 26 licensee shall knowingly receive~~[such]~~ a bid by or on behalf of the seller at an
 27 absolute auction.

(c) Bids may be made by the seller, or upon the seller's behalf, at any auction with reserve, provided that full disclosure has clearly been made that liberty for ~~such~~ bidding is retained. No licensee shall knowingly receive ~~such~~ a bid in the absence of full disclosure. *If the auctioneer knowingly receives a bid on the seller's behalf or the seller makes or procures a bid and notice has not been clearly given that liberty for bidding is reserved, the buyer may avoid the sale or take the real or personal property at the price of the last good faith bid prior to the completion of the sale.*

(d) There shall be no requirement ~~[at a with reserve sale]~~ that the reserve be announced when it is attained.

(e) Nothing in this subsection shall be construed to alter or diminish the provisions of Section 19 of this Act.

(7) (a) At any absolute auction, any advertisement or representation of a minimum or suggested starting bid is prohibited.

(b) At any reserve auction, any advertisement or representation of a minimum or suggested starting bid is prohibited unless:

1. The minimum or suggested starting bid advertised or represented is sufficient to satisfy the auction listing contract stated reserve or confirmation amount; and

2. The auction listing contract contains a binding acknowledgment by the seller that permission has been granted for disclosure.

➔ Section 21. KRS 330.990 is amended to read as follows:

(1) Any person engaging in auction activities regulated by this chapter without a license shall be guilty of:

(a) For the first offense, a violation with a fine up to two hundred fifty dollars (\$250);

(b) For the second offense, a Class B misdemeanor with a fine up to two

1 hundred fifty dollars (\$250) and up to ninety (90) days imprisonment; and
 2 (c) For the third and subsequent offenses, a Class A misdemeanor with a fine
 3 up to five hundred dollars (\$500) and up to twelve (12) months
 4 imprisonment.

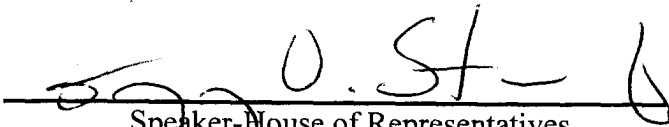
5 (2) The board or its authorized representative may apply for injunctive relief to the
 6 Circuit Court of the county in which the alleged violation occurred to enjoin any
 7 person or entity from committing an act in violation of this chapter. The
 8 injunction proceedings shall be in addition to, and not in lieu of, all penalties and
 9 other remedies in this chapter. In an action for injunction, the board may
 10 demand and recover a civil penalty of fifty dollars (\$50) per day for each
 11 violation, reasonable attorney's fees, and court costs~~[Any person who willfully~~
 12 ~~violates any provision of KRS Chapter 330 or any rule or regulation promulgated in~~
 13 ~~accordance with KRS Chapter 330 shall be punished by a fine of not less than one~~
 14 ~~hundred dollars (\$100) nor more than five hundred dollars (\$500), or by~~
 15 ~~imprisonment for a term not to exceed ninety (90) days, or both].~~

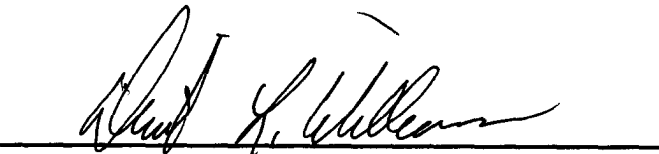
16 ➔Section 22. The following KRS sections are repealed:

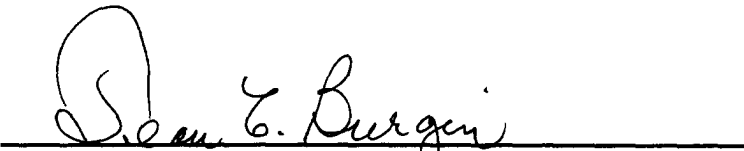
17 330.033 Limited licenses for livestock and tobacco auctioneers.

18 330.035 License required to act as auction house operator.

19 330.090 Nonresident licensee -- Fees -- Consent to be sued -- Waiver of apprenticeship
 20 requirement.


Speaker-House of Representatives


President of Senate

Attest: 
Chief Clerk of House of Representatives

Approved 
Governor

Date March 24, 2009